IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

WP(C).No. 4643 of 2007(C)

PETITIONER:

M/S. SEALINE HOTEL PVT. LTD.,
ESSAR BUILDINGS, NEAR NORTH OVER BRIDGE,ERNAKULAM,
REPRESENTED BY ITS MANAGING DIRECTOR,
V.H.M. RAFEEQUE.

BY ADV. SMT.M.A.VAHEEDA BABU
SRI.JAGAN ABRAHAM M.GEORGE
SRI.P.A.ANEESHA

RESPONDENTS:
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1. **KERALA STATE ELECTRICITY BOARD,**
   VYDHYUTHI BHAVANAM, THIRUVANANTHAPURAM,
   REPRESENTED BY ITS SECRETARY.

2. **ASSISTANT EXECUTIVE ENGINEER,**
   KERALA STATE ELECTRICITY BOARD, MATTANCHERRY.

3. **SUB ENGINEER,**
   ELECTRICAL SECTION, KERALA STATE ELECTRICITY BOARD,
   MATTANCHERRY.

4. **C.K. UBAID, S/O.KAMMU,**
   C.C.3/7 CHATAKKAPARAMBIL HOUSE, KALVATH ROAD,KOCHI.

5. **V.H. SUBAIR, S/O. HASSAN,**
   VALIYAPARAMBIL HOUSE, DOOR NO.6/1274,
   MATTANCHERRY, KOCHI.

BY ADV. SRI.C.K.ABDUL RAHIM
SRI.ABRAHAM K.JOHN
SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.4643/2007 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE SALE DEED NO.2969/95 DTD.22/05/1995 OF SRO MATTANCHERRY.

EXT.P2: COPY OF THE PARTNERSHIP DEED DTD. 16/12/1998 OF M/S. S.R. RESORTS.

EXT.P3: COPY OF THE SAID DEED OF RECONSTITUTION DTD. 31/05/99 OF S.R. RESORTS.

EXT.P4: COPY OF THE DEED OF DISSOLUTION DTD. 18/06/1999 OF M/S. S.R. RESORTS.

EXT.P5: COPY OF THE RECEIPT DTD. 28/07/2005 EVIDENCING THE PAYMENT OF LAND TAX IN RESPECT OF THE PROPERTY HAVING EXTENT OF 28.510 CENTS.

EXT.P6: COPY OF THE RECEIPT DTD. 28/07/2005 EVIDENCING THE PAYMENT OF BUILDING TAX SUBMITTED BY THE 1ST RESPONDENT.

EXT.P7: COPY OF THE ORDER DTD. 7/04/2006 IN WP(C) NO.33014/2005 OF THE HON'BLE COURT.

EXT.P8: COPY OF THE PLAINT IN O.S.NO.173/2006 OF THE MUNSIFF'S COURT, KOCHI.

EXT.P9; COPY OF THE ORDER DTD. 06/04/06 IN I.A.NO.976/2006 IN O.S. NO.173/2006 OF THE HON'BLE MUNSSIF'S COURT.

EXT.P10: COPY OF THE RECEIPT DTD. 30/12/2006 EVIDENCING THE PAYMENT OF PFA LICENCE FEE BY THE PETITIONER TO THE KOCHI CORPORATION.

EXT.P11: COPY OF THE RECEIPT DTD. 30/12/006 EVIDENCING THE PAYMENT OF D & O TRADE LICENCE FEE BY THE PETITIONER TO THE KOCHI CORPORATION.

EXT.P12: COPY OF THE RECEIPT DTD. 15/11/2006 FOR PAYMENT OF RS.100/- TOWARDS THE APPLICATION FEE.

EXT.P13: COPY OF THE RECEIPT DTD. 15/11/2006 FOR PAYMENT OF RS.500/- TOWARDS THE REGISTRATION FEE.

EXT.P14: COPY OF THE POWER ALLOCATION APPLICATION SUBMITTED BY THE PETITIONER.

EXT.P15: COPY OF THE NOTICE DTD. 2/02/2007 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 4643 OF 2007-C

JUDGMENT

The petitioner is a Company registered under the Indian Companies Act. It applied for power supply for a building in its possession. Praying for a mandamus to the K.S.E.B., to grant power supply, this Writ Petition is filed. The brief facts of the case are the following:

2. 28.510 cents of land along with a building was owned by respondents 4 and 5. They purchased it under Ext.P1 document dated 22.5.1995. The respondents 4 and 5 and the Managing Director of the petitioner formed a partnership. In the said partnership, the above property along with the building was given by respondents 4 and 5 as their share in the capital of the firm. Later, the partnership was re-constituted and the company was included as a partner in it. Still later, the partnership was dissolved by Ext.P4 deed of dissolution. When the assets of the firm were distributed, this particular property along with the building was allotted to the share of the petitioner company in 1999. The petitioner submits, thereafter, it was in possession and enjoyment of the said property. Mutation was carried out in the records of the Cochin Corporation as well

as in the revenue records. While so, respondents 4 and 5 tried to trespass into the property. So, the petitioner moved the civil court and obtained Ext.P9 injunction order. The said order is even now in force, it is submitted. The petitioner thereafter applied for power supply as HT consumer, by submitting Ext.P14 application, accompanied by necessary documents. But, it is not being considered, on the ground of the alleged claim over the said property raised by respondents 4 and 5. The petitioner submits, the said stand of the K.S.E.B is unjustified and it is bound to grant power connection.

3. The 4th respondent has filed a counter affidavit, pleading ignorance about the partnership. He submits, he never joined the partnership. There was no re-constitution of the partnership and therefore, there was no allotment of the property to the company. Everything was done behind his back. The Managing Director of the company and the 5th respondent were related and they colluded and created all documents. It is also submitted that the registration of Ext.P4 was done impersonating him. So, the petitioner or its Managing Director have no right over the property, it is contended. It is further submitted that he has filed a civil suit for partition of the property between him and the 5th respondent.

4. The K.S.E.B has filed a statement, in which it is submitted that the

respondents 4 and 5 have claimed that the land over which the line is to be drawn, belongs to them. Since the application is for HT connection, underground cable has to be drawn. For this, the owners of the land should permit or there should be an order of the A.D.M. It is also submitted that the petitioner has not shown the originals of any of the documents to the K.S.E.B. Since HT connection is to be given, the arrears of electricity charges will be a huge amount. So, the genuineness of the claim of the petitioner over the property has to be, at least, prima facie, verified, it is submitted.

5. Heard the learned counsel on both sides. The petitioner would point out that by virtue of Section 43 of the Electricity Act, 2003, if it is found that the petitioner is an occupier, it is entitled to get power connection. The interim injunction granted by the civil court is still in force. Therefore, the fact that the petitioner is in possession of the property cannot be disputed by any one. It is also submitted that the premises mentioned in Section 43 includes the land where the building is located. Therefore, no permission is necessary from the A.D.M for drawing the electric line through the property concerned.

6. For power connection, the applicant need not be the owner of the property. He need only be an occupier. As long as the interim order of the

civil court remains, it can be presumed that the petitioner's occupation if lawful. So, the competent authority of the K.S.E.B is directed to process Ext.P14 application submitted by the petitioner in accordance with law and take a final decision on it, within one month from the date of production of a copy of this judgment. If there are any defects, the petitioner shall be informed of the same and it shall be given an opportunity to cure them. The petitioner shall present before the K.S.E.B the original documents to, prima facie, show that it has title over the property. The claim of the petitioner that the premises includes the land also and therefore, the sanction of the A.D.M for laying the cable is not necessary, shall also be considered by the competent authority. If the said contention is not acceptable, the K.S.E.B shall move the A.D.M for necessary sanction for laying the cable, as expeditiously as possible. It is clarified that the above directions will not affect the rights of the parties over the property. In other words, the directions issued or the electricity connection given will not improve the case of the petitioner or weaken the case of the other side concerning the property. If it is established in the civil proceedings that the petitioner is neither the owner nor the occupier, the power connection is liable to be

dismantled at the request of the real owner/occupier of the property.

The Writ Petition is disposed of as above.

5th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/